



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

CN #24-09
USDA SP 24-2009

MEMORANDUM

TO: Sponsors of the National School Lunch Program & School Breakfast Program

FROM: Mary Szafranski, Deputy Associate Superintendent
Arizona Department of Education, Health and Nutrition Services

Lee Renda, NSLP Nutrition Director
Lynn Ladd, NSLP Health Director
National School Lunch Program

Original Signed

DATE: April 16, 2009

SUBJECT: Equipment Specifications for the 2009 Equipment Assistance Grants for School Food Authorities

This memo provides guidance on equipment specifications for the 2009 Equipment Assistance Grants that are funded by the American Recovery and Reinvestment Act of 2009 (ARRA).

Public Law 111-5, the ARRA provides a one-time appropriation of \$100,000,000 for equipment assistance grants to school food authorities (SFAs) participating in the National School Lunch Program (NSLP). CN#19-09 (#SP20-2009) "2009 Equipment Assistance Grants for School Food Authorities Questions and Answers," and CN #23-09 (SP 23-2009) "Additional 2009 Equipment Assistance Grants for School Food Authorities Questions and Answers,") addresses questions Regional Offices and State agencies have had regarding the use and availability of the ARRA equipment assistance grant funds.

After the release of the ARRA equipment assistance grant funds and the above mentioned memos, FNS has heard that many school food authorities (SFAs) and local schools are, understandably, being approached by vendors, manufacturers, and sales representatives of food service equipment companies with marketing material of their products. However, some SFAs and local schools are interpreting these marketing materials as company and/or product endorsement from USDA. To be clear, USDA does **not** endorse any company or product,

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including companies offering food service equipment that may be purchased with the ARRA equipment assistance grant funds.

In addition, there has been some concern that the marketing materials or equipment specifications provided by the food service equipment companies may be used in the SFA's solicitation document(i.e., request for proposal or invitation for bid) to purchase equipment with the ARRA equipment assistance grant funds.

While SFAs may use *many* equipment specifications from *many* different companies as a reference in writing their solicitation documentation, the following requirements must be followed:

- A SFA must not allow any company that plans to bid on the procurement, or its representatives, to write the specifications.
- SFAs must also refrain from inadvertently picking up specific equipment specifications found in a company's feature list as this will also exclude that company from competing as it restricts open and free competition and is prohibited.

Using one company's specification, which that company has developed or drafted, is anticompetitive and limits the products the SFA or school could award a bid for: and therefore is a prohibited procurement method. It is in the vital interest of an SFA and school to have the largest number of approved products from multiple manufacturers to secure the quality desired at the most competitive price.

As stated in 7 CFR section 3016.60, "in order to ensure objective contractor performance and eliminate unfair competitive advantage, **a person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use** by a grantee [State agencies] or subgrantee [SFA and local schools] in conducting a procurement under the USDA entitlement programs specified in Sec. 3016.4(b) [i.e., Child Nutrition Programs] **shall be excluded from competing for such procurements.**

Such persons that develop or draft specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents are **ineligible for contract awards resulting from such procurements regardless of the procurement method used.**

However, prospective contractors may provide grantees or subgrantees with specification information related to a procurement and still compete for the procurement if the grantee or subgrantee, **and not the prospective contractor**, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement."

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